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CHARLES ELMORE CROPLEY
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THE
Supreme Court of the United States

OCTOBER TERM, 1943.

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No. **234**
—

JENNINGS A. SNIDER, *Petitioner,*

v.

VIDA RUTH KELLY, THE NATIONAL BANK OF
WASHINGTON, EXECUTOR OF THE ESTATE
OF JAMES MERRILL KINSELL, DECEASED,
RUTH KELLY, MARY JANE KELLY, HILDA F.
KELLY AND VIDA CLYDE KELLY, *Respondents.*

—
**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA AND
BRIEF IN SUPPORT.**
—

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Washington, D. C.,
Counsel for Petitioner.



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The United States Court of Appeals for the District of Columbia erred in holding that the conveyance by the respondent Vida Ruth Kelly was not made for the purpose of hindering, delaying and defrauding your petitioner, in accordance with Title 12, Section 401 of the District of Columbia Code of 1940, further known as Section 1120 of the Code of the District of Columbia amended June 7, 1924, and further known as the Act of March 3, 1901, 31 Stat. 1368, Chapter 854	8
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RUTH KELLY, MARY JANE KELLY, HILDA F.
KELLY AND VIDA CLYDE KELLY, *Respondents*.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA.**

The petition of Jennings A. Snider respectfully shows to
this Honorable Court:

STATEMENT OF THE CASE.

On March 10, 1935, respondent Vida Ruth Kelly gave a
promissory note in the sum of \$8,341.23, payable sixty days
after date to Julius Garfinckel & Company, which said note
was indorsed to your petitioner and remains unpaid.

On August 16, 1937, Ida J. Kinsell, mother of the respondent Vida Ruth Kelly, and of the decedent, James Merrill Kinsell, departed this life, and, among other things, left real estate at 1608 17th Street, N. W., Washington, D. C., and an undivided one-half interest in this property became vested in the respondent Vida Ruth Kelly.

On February 23, 1938, suit was instituted by your petitioner against the respondent Vida Ruth Kelly on the note above referred to, and, on the same day, the summons and complaint were served on Vida Ruth Kelly and a judgment obtained in these proceedings against the respondent, Vida Ruth Kelly, on the 14th day of November, 1938, in the sum of \$8,398.70, with interest from July 10, 1938. On March 1, 1938, the respondent Vida Ruth Kelly voluntarily, and without any consideration, transferred by deed all her right, title and interest in the above described property to her brother, James Merrill Kinsell, it being admitted that she had no other property other than a life interest in herself and her brother, James Merrill Kinsell, in the mother's homestead in Pennsylvania.

At the time of this conveyance to her brother, respondent Vida Ruth Kelly was the only living heir of her brother, who was in bad health (R. 27), but thereafter the decedent, James Merrill Kinsell, made a Will which was typewritten the blank day of May and in which was inserted "June 9, 1938" as the date of the execution of the said Will, by which Will the above described property, together with all the property owned by the decedent, James Merrill Kinsell, was conveyed equally to the four children of the respondent Vida Ruth Kelly, and who have been made parties hereto, in addition to the National Bank of Washington, the Executor of the Estate of James Merrill Kinsell.

On November 28, 1938, a bill of complaint was filed by your petitioner against the respondent Vida Ruth Kelly and James Merrill Kinsell, for the purpose of setting aside the conveyance from Vida Ruth Kelly to James Merrill Kinsell, and to sell the interest of Vida Ruth Kelly in the

above described property, for the purpose of satisfying the judgment obtained against her, and on the 11th day of November, 1940, prior to the trial of this case, James Merrill Kinsell, departed this life, and the parties named above were made parties in his place and stead.

The respondent Vida Ruth Kelly defended on the ground that she had no intention of defrauding this petitioner, and further that she felt that she had no interest in this property, for the reason that her brother, James Merrill Kinsell, in 1907, had loaned his mother the sum of \$10,000.00, and she, in turn, had given a mortgage to secure the payment of this note, but that no payment of any kind was ever made on the note, nor was it shown that there had been any written acknowledgment by the debtor, Ida J. Kinsell, and, while a copy of the note was introduced in evidence, over the objection of counsel for the petitioner, no testimony was introduced covering the disposition of the original note, other than that it could not be found. The trustees named in the deed of trust had been dead for years and no action taken on the part of the respondent Vida Ruth Kelly or the decedent for a transfer of this property, until after suit was filed by your petitioner.

All the testimony covering the past proceedings was in the form of hearsay (R. 24-41), with the exception of the statement made by the respondent Vida Ruth Kelly (R. 26), which is as follows:

“* * * and that she did not make the conveyance to her brother with the intention of hindering, delaying or defrauding Mr. Snider or any other creditor; that she had no such thought.”

The District Court dismissed the Bill of Complaint (R. 19) and an appeal taken to the United States Court of Appeals for the District of Columbia, which affirmed the order of the District Court of the United States for the District of Columbia in dismissing the bill of complaint.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the United States Court of Appeals for the District of Columbia is on a question of general importance and is in conflict with its previous decisions and affects property rights.
2. The decision of the United States Court of Appeals for the District of Columbia presents a question relating to the construction of a Statute of the United States.
3. The decision of the United States Court of Appeals for the District of Columbia does not give proper effect to the applicable decisions of this Court.
4. The decision of the United States Court of Appeals for the District of Columbia is in conflict with the decisions of other United States Circuit Courts of Appeals.

QUESTIONS PRESENTED.

1. Whether the United States Court of Appeals for the District of Columbia was in error in affirming the judgment of the District Court of the United States for the District of Columbia, in dismissing the Bill of Complaint and in failing to hold that such conveyance was in violation of Title 12, Section 401 of the District of Columbia Code of 1940, further known as Section 1120 of the Code of the District of Columbia amended to June 7, 1924, and further known as the Act of March 3, 1901, 31 Stat. 1368, Chapter 854, where it is shown that the respondent Vida Ruth Kelly, six days after the filing of suit and service of the complaint upon her, voluntarily and without consideration, conveyed all her interest in property to her brother, James Merrill Kinsell, and without retaining any property or assets for the payment of her creditor, she in addition being his only heir, and which said property was subsequently, by will, conveyed to the four children of the respondent Vida Ruth Kelly.

2. Whether the United States Court of Appeals for the District of Columbia was in error in failing to hold that a voluntary conveyance, without any consideration, by a debtor, with or without fraudulent intent, when such conveyance impairs the means of the grantor to pay her debts, is void as a matter of law as being made to hinder, delay and defraud creditors, in violation of Title 12, Section 401 of the District of Columbia Code of 1940, further known as Section 1120 of the Code of the District of Columbia amended to June 7, 1924, and further known as the Act of March 3, 1901, 31 Stats. 1368, Chapter 854.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 8231, "JENNINGS A. SNIDER, APPELLANT, vs. VIDA RUTH KELLY, RUTH KELLY, MARY JANE KELLY, ET ALS., APPELLEES" and that the said judgment of the United States Court of Appeals for the District of Columbia may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

JENNINGS A. SNIDER, by
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1010 Vermont Avenue, N. W.,
Washington, D. C.,
Counsel for Petitioner.